IN THE HIGH COURT OF JUDICAURE AT MADRAS

Dated:- 21.03.2007

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.1552 of 2003
and
W.A.M.P. No.2068 of 2003

Kesavalu Naidu ... Appellant/ Petitioner

vs.

1. The Chennai Metropolitan
Development Authority,
represented by its
Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

2. The Chief Executive Officer,
Area Development Unit,
Chennai Metropolitan
Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3. R.Sivapraksam ... Respondents/ Respondents

Appeal under Clause 15 of the Letters Patent as against the order of this Court, dated 28.03.2003, made in W.P. No.2487 of 2003.

Writ Petitioner filed under Art 226 of the Constitution of India to issue a writ of Certiorarified mandamus calling for the records of the second respondent herein relating to the letter No.K1/9347/2002 dated 3.12.2002 and quash the same and direct the respondents 1 and 2 herein to allot the plot No.179-E Road at the Junction of E- Road and F- Road of Koyambedu Market complex in favour of the petitioner.

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For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel for
Ms.AL.Gandhimathi.
For R-1 & R-2 : Mr.J.Ravindran
For R-3 : Mr.R.Thiyagarajan

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(Judgment of the Court, delivered by P.SATHASIVAM, J.)

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Aggrieved by the order of the learned single Judge, dated 28.03.2003, made in W.P. No.2487 of 2003, dismissing the Writ Petition as devoid of any merit, writ petitioner Kesavalu Naidu has filed the above Writ Appeal.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

According to the petitioner, the first respondent / Chennai Metropolitan Development Authority came out with an advertisement in the New Indian Express dated 05.09.2002, inviting applications for allotment of plots for various purposes inclusive of a commercial plot for Weigh Bridge in Koyambedu Wholesale Market Complex. The rate of the plots was fixed as Rs.1,220/- per sq. ft. in the advertisement and applications were received by the Authority. So far as Koyambedu Wholesale Market Complex, shops, commercial plots etc. are concerned, the first respondent stated in the advertisement that, in future, allotment would be made on first come first served basis and that, if more number of applications are received for shops/plots, allotment would be made by drawl of lots. The petitioner submitted an application to the first respondent and his application was acknowledged on 16.09.2002. Though he was eagerly waiting for allotment orders, he did not receive any communication. On 22.01.2003, he came to understand that the third respondent was allotted the plot for the purpose of Weigh Bridge under proceedings dated 03.12.2002 of the second respondent and that, pursuant to the said allotment, the third respondent was taking steps to install the Weigh Bridge.

The action of respondents 1 and 2 in allotting the plot to the third respondent is arbitrary, illegal and unjust. In the counter affidavit filed by the third respondent, he admitted that even on 11.09.2002 itself he was advised by the CMDA to remit the cost of the Weigh Bridge with M/s.Perfect Weighing System, Chennai-98, exposing the predetermination and the favouritism shown by the authorities in his favour.

According to the petitioner, the learned single Judge, while disposing of the writ petition, even though had appreciated that drawl of lots should have been conducted, erroneously held against the petitioner by observing that the petitioner had applied for a plot in A-Road while the plot was available in E-Road; that the 3rd respondent applied for the plot in E-Road and that the plot of the size applied for by the petitioner was not available. The observations of the learned Judge are not germane to the issue. According to the petitioner, there were two applications for one

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plot and the third respondent was picked and chosen for being conferred the benefit of allotment. The order of the learned single Judge is untenable in law and deserves to be set aside.

3. Heard Mr. AR.L.Sundaresan, learned Senior Counsel for the petitioner/appellant, Mr. J.Ravindran, learned counsel for the CMDA and Mr.R.Thiyagarajan, learned counsel for the third respondent.

4. Mr.AR.L.Sundaresan, learned Senior Counsel, by pointing out that the learned Judge failed to see that the advertisement issued by the first respondent did not specify the location of the plot, would submit that all the applications received pursuant to the advertisement in respect of the plot for weigh bridge should have been clubbed together irrespective of the plot sought for and dealt with as per the terms of the advertisement and in accordance with law. He contended that the allotment made in favour of the third respondent amounts to conferring State largesse for extraneous reasons. According to him, even the third respondent had applied for a plot of a different size viz., 4000 sq. ft., but, he has been allotted a plot of 3,265 sq. ft., hence, his application also could not be treated as one for the plot allotted. In any event, according to the learned Senior Counsel, the impugned allotment was violative of Article 14 of the Constitution of India.

5. On the other hand, Mr.R.Thiyagarajan, learned counsel appearing for the contesting third respondent submitted that, taking into consideration all relevant aspects, respondents-1 and 2, who are the competent authorities, accepted the claim of the third respondent and allotted the commercial plot as advertised; in such circumstances, inasmuch scope of judicial review is very limited in a matter of this nature, the learned Judge rightly dismissed the writ petition and there is no valid ground for interference.

6. We have carefully perused all the relevant materials and considered the rival contentions.

7. It is seen from the materials placed that the first respondent-CMDA published advertisement in the Daily-New Indian Express, dated 05.09.2002, inviting applications for allotment of plots for various purposes inclusive of a commercial plot for running Weigh Bridge in Koyambedu Wholesale Market Complex. It is the grievance of the petitioner that though he submitted his Application on 16.09.2002, subsequently, he came to understand that respondent No.3 was allotted the plot for the purpose of installation of weigh bridge. It is seen that the third respondent applied for allotment of a site measuring 40' x 100' in his letter

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dated 05.09.2002. The application of the third respondent was considered and he was allotted with a commercial site for weigh bridge at the junction of E-Road and F-Road on 03.12.2002. It is relevant to point out that the petitioner was seeking allotment of a commercial plot of 2400 sq. ft. in a particular place which was negatived due to non availability of the specified size / place. Mr.AR.L.Sundaresan, learned Senior Counsel, submitted that even though the third respondent had applied for allotment of a plot measuring 4000 sq. ft., in spite of such request, a lesser area of the 3265 sq. ft. alone was allotted; in such circumstances, according to him, the authorities could have considered the claim of the petitioner. He also contended that even before expiry of the last date, viz., 20.09.2002, for submission of applications, the third respondent had been allotted the plot, which would go to show that the authorities determined already to allot the plot in favour of the third respondent. Very same contention was also raised before the learned Judge and based on the averments in the counter affidavit of the respondents, the learned Judge rightly rejected the same. It is relevant to point out that, pursuant to the advertisement, the petitioner and the third respondent alone applied for and taking into consideration the details furnished in their respective applications as to the size and area, the authorities preferred the third respondent and passed allotment order in his favour. It is not in dispute that the petitioner had claimed any area of 2400 sq. ft. only, whereas, the area of the plot allotted to the third respondent is 3265 sq. ft. As rightly observed by the learned Judge, inasmuch as the allotted plot is more than the required limit of the petitioner, who had applied for allotment of a smaller plot, the action of respondents-1 and 2 cannot be faulted with. It is brought to our notice that the third respondent has been in the trade for the past 22 years with vast experience and is also having a weigh bridge at Red Hills. Incidentally, it is also relevant to point out that commercial sites have also been allotted in favour of Ms.K.Uma and Ms.K.Maheshwari, who are none else than the daughters of the petitioner. Further, with reference to the representation of the petitioner for allotment of space for commercial purposes in Koyambedu Wholesale Market Complex Area; since the commercial plots available at the relevant time were more than four grounds, by letter dated 28.01.2003, the petitioner was informed by R-1 and R-2 that commercial plot of 60' x 40' is not available and that commercial plots of four grounds alone are available and he was also requested to apply afresh within 15 days. It is also brought to our notice that the petitioner did not apply for fresh allotment. Thus, it is clear that though the request of the petitioner for grant of 60' x 40' plot was rejected, inasmuch as commercial plots of larger extent were available, he was requested to apply afresh.

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8. As rightly pointed out by Mr.R.Thiyagarajan, learned counsel appearing for the 3rd respondent, in complex contractual matters court cannot substitute its decision for the decision of the party awarding the contract. The above view is stressed in the decision reported in (2000 (1) CTC 594 - Air India Limited vs. Cochin International Airport Limited). In series of decisions, this Court as well as the Hon'ble Supreme Court evolved several principles on the aspect of interference by courts in contractual matters. Some vital principles are,

> (i) Government is free to enter into any contract with the citizens but the court may interfere where it acts arbitrarily or contrary to public interest;
>
> (ii) Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate;
>
> (iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.

To put it clear, courts would not interfere with the matter of administrative action or changes made therein unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

9. A Full Bench of this Court, in the decision reported in 1997 (3) Law Weekly 741 (The Aluminium Industries Limited v. The Minerals & Metals Trading Corporation of India Limited, etc.), held that courts may exercise power of judicial review under Article 226 of the Constitution of India in the matters of enforcing contractual obligations rarely and sparingly.

9-A. In Ramniklal N.Bhutta vs. State of Maharashtra (1997 (1) SCC 134), the Supreme Court held that exercise of power under Article 226 of the Constitution is discretionary and High Court must balance the competing interests.

9-B. In Rajasthan Housing Board v. G.S.Investments (2007 (1) SCC 477), the Supreme Court has observed that, in contractual matters including Government contracts, auctions and cancellation of auction of plots by State Government, even if some defect was found in the

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ultimate decision resulting in cancellation of the auction, the Court should exercise its discretionary power under Article 226 with great care and caution and should exercise it only in furtherance of public interest.

10. Considering the limited scope of judicial review in respect of contractual matters and taking note of the factual details, more particularly in respect of the claim of the petitioner and the 3rd respondent relating to the size and area of the plot, we see no ground to interfere with the conclusion arrived at by the learned Judge, affirming the decision of respondents-1 and 2/CMDA.

11. In the light of the above discussion, we do not find any error or infirmity for interference. Consequently, Writ Appeal fails and the same is dismissed. No costs. Connected Miscellaneous Petition also stands dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

2. The Chief Executive Officer,
Area Development Unit,
Chennai Metropolitan
Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

1 cc to Ms.AL.Gandhimathi, Advocate, Sr. 17354
1 cc to Mr.R.Thiyagarajan, Advocate, Sr. 17693

W.A. No.1552 of 2003.

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